

BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS

JEFF HATCH-MILLER Chairman
WILLIAM A. MUNDELL
MARC SPITZER
MIKE GLEASON
KRISTIN K. MAYES

JUL 20 2005

Arizona Corporation Commission
Director Of Utilities

UTILITIES DIVISION STAFF,

DOCKET NO. T-03267A-03-0887

Complainant,

DECISION NO. 67980

v.

MCLEODUSA TELECOMMUNICATIONS
SERVICES, INC.,

Respondent

OPINION AND ORDER

DATE OF HEARING:

May 11, 2005

PLACE OF HEARING:

Tucson, Arizona

ADMINISTRATIVE LAW JUDGE:

Jane L. Rodda

APPEARANCES:

Michael W. Patten, ROSKA HEYMAN &
DEWULF, PLC, on behalf of Respondent; and

David M. Ronald, Staff Attorney Legal Division,
on behalf of the Staff of the Utilities Division

BY THE COMMISSION:

* * * * *

Having considered the entire record herein and being fully advised in the premises, the
Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

FINDINGS OF FACT

1. On December 8, 2003, the Commission Utilities Division Staff ("Staff") filed a
Complaint against McLeodUSA Telecommunications Services, Inc. ("McLeod" or "Company").
The Complaint alleged that McLeod violated 47 U.S.C. § 252(e) of the Telecommunications Act of
1996 (the "Act") and A.A.C. R14-2-1506 (A) and (C) by failing to file with the Commission certain
documents which Staff alleges are interconnection agreements between McLeod and Qwest
Corporation ("Qwest").

2. Staff alleged the following agreements involving McLeod were Interconnection Agreements that should have been filed for Commission approval, but which were not filed:

(a) Confidential Settlement Document with US WEST dated 4/25/00;

(b) Confidential Billing Settlement Agreement with Qwest dated 9/29/00;

(c) Amendment to Confidential Billing Statement Agreement with Qwest dated 10/26/00;

(d) Volume Discount Agreement with Qwest Communications Corp. and its subsidiaries (McLeod buys from Qwest) dated 10/26/00; and

(e) Purchase Agreement with Qwest Communications Corp. and its subsidiaries (Qwest buys from McLeod) dated 10/26/00.¹

3. On December 18, 2003, Staff and McLeod filed a Stipulation to extend the time for McLeod to answer the Complaint.

4. On May 20, 2004, McLeod filed an Answer, denying that Section 252(e) imposes any obligations on McLeod to file its Interconnection Agreements with ILECs, and denying that all of the agreements identified by Staff are Interconnection Agreements subject to the Act.

5. By Procedural Orders dated July 2, 2004, November 19, 2004, January 6, 2005 and February 9, 2005, the Commission convened a series of Procedural Conferences during which the parties reported they were engaging in settlement discussions. At the Procedural Conference held on March 7, 2005, the parties indicated that they should have a written Settlement Agreement filed within 30 days.

6. By Procedural Order dated March 15, 2005, the matter was set for hearing and the parties were ordered to file a written Settlement Agreement and testimony in support of that Settlement.

7. On April 25, 2005, Staff filed the Settlement Agreement between it and McLeod, and the written testimony of Elijah Abinah in support of the Settlement. On the same date, McLeod filed the testimony of James Thompson, General Counsel for McLeod. A copy of the Settlement

¹ The same agreements were part of an investigation of Qwest's failure to file. That investigation, which involved more than just the McLeod agreements, ultimately resulted in a settlement approved in Decision No. 66949 (April 30, 2004) that required, among other things, Qwest to pay penalties of \$9,000,000.

1 Agreement is attached hereto as Exhibit A, and incorporated herein by reference.

2 8. On May 11, 2005, the hearing on the Settlement Agreement convened as scheduled
3 before a duly appointed Administrative Law Judge.

4 9. The Settlement Agreement resolves all matters in dispute between the parties
5 regarding Staff's Complaint. The Settlement Agreement provides in pertinent part:

6 (a) The parties stipulate that the agreements cited by Staff are Interconnection
7 Agreements pursuant to current Federal Communications Commission ("FCC") and Commission
8 rules and orders;

9 (b) McLeod accepts its shared obligation to file and seek Commission approval for all
10 future Interconnection Agreements, and that all Interconnection Agreements shall be filed within 30
11 days of execution;

12 (c) McLeod agrees that if an Interconnection Agreement is presently in existence and
13 not yet filed for approval, it will file such Interconnection Agreement within 45 days of approval of
14 the Settlement Agreement;²

15 (d) McLeod agrees that if a conflict arises between the law in existence in the future
16 and the terms of the Settlement Agreement, the stricter obligation shall control, unless it would result
17 in a violation of law;

18 (e) McLeod agrees to pay the State of Arizona the sum of \$75,000 within 30 days of
19 an Order approving the Settlement;

20 (f) McLeod must notify the Commission of all future oral interconnection or
21 commercial agreements with ILECs;

22 (g) McLeod must notify the Commission of all wholesale telecommunications
23 agreements between McLeod and ILECs relating to resale, interconnection or the purchase of
24 unbundled network elements entered into in Commission dockets of general application within 10
25 days of execution;

26 (h) McLeod must notify the Commission of any future commercial agreements with
27

28 ² Neither McLeod nor Staff are currently aware of any existing Interconnection Agreements that have not yet been filed.

1 ILECs that relate to interconnection or the purchase of network elements from an ILEC.

2 (i) In agreeing to the fine amount, Staff considered McLeod's number of access lines
3 as compared to Qwest; McLeod's number of residential and business customers; McLeod's Arizona
4 revenues; and the number of unfilled Interconnection Agreements. Staff believes that the
5 comparisons between McLeod and Qwest indicate that the fine agreed to as part of this Settlement is
6 comparable to the fine imposed on Qwest in Decision No. 66949.

7 10. Staff testified that the Settlement Agreement is in the public interest because the
8 Company's express commitment to file Interconnection Agreements and notify the Commission of
9 "commercial agreements," in conjunction with the monetary penalties, address Staff's concerns that
10 resulted in it bringing the Complaint. Staff testified that resolving the matter through settlement
11 rather than a contested hearing enables Staff to devote resources to other issues pending before the
12 Commission, and the Settlement eliminates the uncertainty associated with litigation risk.

13 11. McLeod testified that the Settlement Agreement advances the public interest in three
14 primary ways. First, it includes a specific commitment by McLeod that clarifies the Company's
15 responsibilities with respect to filing Interconnection Agreements. Second, it includes a significant
16 payment that reflects McLeod's commitment to take responsibility for its past action. Finally, it will
17 resolve all issues between the parties and allow McLeod to devote its scarce resources to providing
18 high quality service and bringing competitive alternatives to Arizona consumers.

19 12. McLeod's obligation to notify the Commission of any "commercial agreements" will
20 help the Commission to monitor the marketplace and protect the public interest by making sure the
21 Commission is aware of all agreements between McLeod and ILECs for interconnection or the
22 purchase of network elements.

23 13. Only the State of Washington has required McLeod or any other CLEC to pay a
24 penalty related to the failure to file these agreements. The Washington state fine of \$25,000 is less
25 than the amount McLeod has agreed to pay in Arizona.

26 14. We concur with the parties that the Settlement Agreement is a fair and reasonable
27 resolution of the issues raised in Staff's Complaint against the Company and should be approved.
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CONCLUSIONS OF LAW

1. McLeod is a public service corporation pursuant to Article XV of the Arizona Constitution and under Arizona Revised Statutes, Title 40, and the Competitive Telecommunication Rules.

2. The Commission has jurisdiction over McLeod and the subject matter of the Complaint.

3. Notice of the proceeding was provided in accordance with applicable law.

4. The Settlement Agreement attached hereto as Exhibit A, is a fair and reasonable resolution of the issues raised in the Complaint, is in the public interest and should be approved.

ORDER

IT IS THEREFORE ORDERED that the Settlement Agreement entered into between McLeodUSA Telecommunications Service, Inc. and Commission Utilities Division Staff, attached hereto as Exhibit A, is approved.

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IT IS FURTHER ORDERED that McLeodUSA Telecommunications Services, Inc shall pay the \$75,000 penalty, within 30 days of the effective date of this Decision, said payment to be made payable to the State of Arizona and presented to the Arizona Corporation Commission.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.


CHAIRMAN

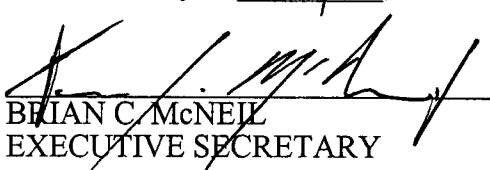

COMMISSIONER


COMMISSIONER


COMMISSIONER


COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Secretary of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this 18th day of July, 2005.


BRIAN C. McNEIL
EXECUTIVE SECRETARY

DISSENT _____

DISSENT _____

JR:mj _____

SERVICE LIST FOR: MCLEODUSA TELECOMMUNICATIONS SERVICE, INC.

DOCKET NO.: T-03267A-03-0887

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BEFORE THE ARIZONA CORPORATION COMMISSION

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JEFF HATCH-MILLER - Chairman
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UTILITIES DIVISION STAFF,

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v.

MCLEODUSA TELECOMMUNICATIONS
SERVICES, INC.

Respondent .

Docket No. T-03267A-03-0887

SETTLEMENT AGREEMENTPARTIES

The Parties to this Settlement Agreement are the Arizona Corporation Commission Staff ("Staff") and McLeodUSA Telecommunications, Inc (McLeodUSA).

INTRODUCTION

The Parties stipulate to this Settlement Agreement to resolve all matters in dispute between them regarding the Arizona Corporation Commission ("Commission") Complaint in this docket, including all claims, whether known or unknown, related to the subject of or arising from the Complaint with respect to interconnection agreements between McLeodUSA and Qwest entered into between April 25, 2000 and October 26, 2000. The Parties request a Commission order approving this Settlement Agreement as soon as possible.

DEFINITIONS

The term "Interconnection Agreement" as used in this Settlement Agreement shall include any agreement required to be filed and/or approved by the Commission pursuant to 47 U.S.C. § 252(e) of the Telecommunications Act of 1996 ("the 1996 act") and A.A.C. Rule R14-2-1506.

"McLeodUSA" includes McLeodUSA, and/or its subsidiaries or affiliates, including officers, directors, employees and agents of McLeodUSA and its subsidiaries or affiliates.

PROCEDURAL HISTORY

On December 9, 2003, the Commission issued a complaint against McLeodUSA. The Commission alleged that McLeodUSA failed, in violation of state and federal law, to file and seek Commission approval for the following Agreements:

- a. Confidential Settlement Document with US WEST dated 4/25/00
- b. Confidential Billing Settlement Agreement with Qwest dated 9/29/00
- c. Amendment to Confidential Billing Settlement Agreement with Qwest dated 10/26/00
- d. Volume Discount Agreement with Qwest dated on or around 10/26/00
- e. Purchase Agreement with Qwest Communications Corp. and its subsidiaries ("Qwest") (McLeod buys from Qwest) dated 10/26/00
- f. Purchase Agreement with Qwest Communications Corp. and its subsidiaries ("Qwest") (Qwest buys from McLeod) dated 10/26/00

between McLeodUSA and Qwest Corporation ("Qwest"), an incumbent local exchange carrier ("ILEC"), as required by 47 U.S.C. § 252(a)(1) and (e), and A.A.C. Rule R14-2-1506. On May 20, 2004, McLeodUSA filed an Answer to the Complaint. McLeodUSA argued that Staff had no cause of action against it.

SPECIFIC TERMS

Staff and McLeodUSA agree to the following terms and conditions:

1 1. For the purposes of this Settlement Agreement only and in the interests of settling the
2 disputes between the Parties, McLeodUSA stipulates that Agreements:

- 3 a. Confidential Settlement Document with US WEST dated 4/25/00
- 4 b. Confidential Billing Settlement Agreement with Qwest dated 9/29/00
- 5 c. Amendment to Confidential Billing Settlement Agreement with Qwest dated
6 10/26/00
- 7 d. Volume Discount Agreement with Qwest dated on or around 10/26/00
- 8 e. Purchase Agreement with Qwest Communications Corp. and its subsidiaries
9 ("Qwest") (McLeod buys from Qwest) dated 10/26/00
- 10 f. Purchase Agreement with Qwest Communications Corp. and its subsidiaries
11 ("Qwest") (Qwest buys from McLeod) dated 10/26/00

12 between it and Qwest constitute Interconnection Agreements under current Federal Communications
13 Commission ("FCC") and Commission rules and orders.

14 2. Staff's position is that Federal Law and Commission rules and orders require CLEC's
15 to file and seek Commission approval for all Interconnection Agreements, whether written or oral.
16 At this time, both Staff and McLeodUSA agree that the FCC has not issued a definitive ruling on
17 whether CLEC's have the above obligation under Federal Law. McLeodUSA is aware of Staff's
18 position regarding the filing obligations of CLEC's under Federal Law. Staff is aware of
19 McLeodUSA's position that Federal Law imposes a requirement solely on ILEC's to file
20 Interconnection Agreements. McLeodUSA admits that Commission rules and orders require it to file
21 and seek Commission approval for all Interconnection Agreements, whether written or oral, and
22 McLeodUSA will do so for all future Interconnection Agreements. McLeodUSA, however,
23 emphasizes that at the time it entered into each Agreement identified in the Commission Complaint,
24 it believed in good faith, based on the law in existence at the time, that Qwest was the only party
25 obligated to file Interconnection Agreements.

26 3. McLeodUSA accepts its shared obligation to file and seek Commission approval for
27 all future Interconnection Agreements in compliance with this Settlement Agreement and existing
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1 law. McLeodUSA agrees that all Interconnection Agreements shall be filed with thirty (30) days of
2 execution.

3 4. McLeodUSA agrees that if an Interconnection Agreement is presently in existence and
4 not yet filed for approval, the Interconnection Agreement will be filed within forty-five (45) days of
5 approval of this Settlement Agreement by the Commission. Neither Staff nor McLeodUSA is
6 currently aware of any such Interconnection Agreement presently in existence and not yet filed for
7 approval.

8 5. McLeodUSA agrees that if a conflict arises between the law in existence in the future
9 and the terms of this Settlement Agreement, the stricter obligation shall control, unless complying
10 with the stricter obligation would result in a violation of the law, in which case the then existing law
11 would control. Either party may give the other party written notice of its belief that a change in the
12 law has affected this Settlement Agreement. The parties agree to meet and negotiate in good faith to
13 bring this Settlement Agreement into compliance with existing law. If the parties cannot reach
14 agreement within sixty (60) days of the date notice was given that a change in the law has occurred,
15 either party may petition any state or federal court in Arizona for appropriate relief.

16 6. McLeodUSA agrees to pay the State of Arizona seventy-five thousand dollars
17 (\$75,000) in settlement of this proceeding. This amount shall be made payable to the State Treasurer
18 for deposit in the General Fund for the State of Arizona and shall be remitted within 30 days of an
19 order approving this settlement agreement.

20 7. McLeodUSA must notify the Commission of all future oral interconnection or
21 commercial agreements with ILECs as set forth in paragraphs 8 and 9 of the Specific Terms before
22 implementing the terms of such an agreement.

23 8. McLeodUSA must notify the Commission of all wholesale telecommunications
24 agreements between McLeodUSA and ILECs relating to resale, interconnection or the purchase of
25 unbundled network elements entered into in Commission dockets of general application within 10
26 days of execution.

27 9. McLeodUSA must notify the Commission of any future commercial agreements with
28 ILEC's that relate to interconnection or the purchase of network elements from an ILEC.

GENERAL TERMS

The Parties stipulate to the following general terms of the Settlement Agreement:

1. The Parties agree to use their best efforts to secure the approval by the Commission of the Specific Terms of this Settlement Agreement. The Parties understand that the Specific Terms listed do not apply unless approved by the Commission.

2. The Specific Terms of the Settlement Agreement represent an integrated resolution of issues. Accordingly, the Parties recommend that the Commission adopt the Specific Terms of this Settlement Agreement in its entirety. Each party reserves the right to withdraw from the Settlement Agreement if the Commission does not approve the Specific Terms of the Settlement Agreement in its entirety or conditions approval of the Specific Terms of the Settlement Agreement on material revisions to its terms and conditions.

3. The Parties agree to provide at least one witness at the time the Settlement Agreement is presented to the Commission to provide testimony in support of the Settlement Agreement and answer any questions the Commission may have. The Parties agree to cooperate, in good faith, in the development of such other information as may be necessary to support and explain the basis of this Settlement Agreement, and to supplement the record accordingly.

4. The Parties enter into this Settlement Agreement to avoid further expense, uncertainty, and delay in resolving the issues between them in this docket. By executing this Settlement Agreement, the Parties shall not be deemed to have accepted or consented to the facts, principles, methods, or theories employed in arriving at the Settlement Agreement. The Parties shall not use, advocate or otherwise employ—itsself or in conjunction with any other individual or entity—this Settlement Agreement for disputing, arguing, or resolving any issues in any other proceeding.

5. All negotiations relating to or leading to this Agreement are privileged and confidential, and no party is bound by any position asserted in negotiations, except to the extent expressly stated in this Agreement. As such, evidence of conduct or statements made in the course of negotiation of this Agreement is not admissible as evidence in any proceeding before the Commission, any other regulatory agency or any court.

7 This Settlement Agreement is presented to the Commission for the Commission's approval.
8 If this Settlement Agreement is approved, it would constitute a full settlement of all issues raised
9 against McLeodUSA in the Complaint by the Commission with respect to the aforementioned
10 interconnection agreements between Qwest and McLeodUSA that were entered into between April
11 25, 2000 and October 26, 2000 and not filed with the Commission.

BY:

BY:

DECISION NO. 67980 ⁶

